Clearinghouse Review

NATIONAL CLEARINGHOUSE FOR LEGAL SERVICES, INC.









VOLUME 25



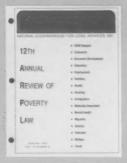


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MAY 1991 TO APRIL 1992













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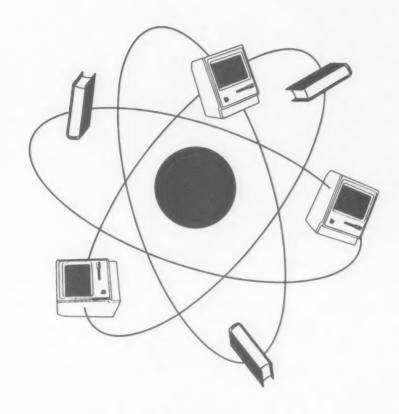
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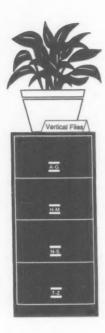
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Edited by John Blaser

Designed and Produced by Charlene E. Hild

Assisted by Gretchen Schroeder



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Preface

The Clearinghouse is pleased to publish the **Annual Index to Volume 25** (May 1991 to April 1992). In addition to its standard sections, this **Index** has been redesigned to ease reading and facilitate research. Readers are reminded to use the **Index** in conjunction with the Cumulative Index to Volumes 1-17, the Annual Indexes to Volumes 18, 19, 20, 21, 22, 23, and 24, and the LSC Data Base maintained on the WestlawTM computer system for comprehensive research in Clearinghouse case files. The Clearinghouse also provides library assistance and/or free Electronic File Room (EFR) searches of the Clearinghouse internal computer system.

Electronic File Room Searches

Clearinghouse cases in Volume 25 are all on-line and searchable at the Clearinghouse. To request an EFR search, call toll-free 1-800-621-3256. You will receive a copy of the abstracts retrieved and copies of the documents clearly on point. Please specify that you are requesting a free search, since the toll-free number is also used for WestlawTM and DialogTM requests, which are not free, and for other document orders. (Programs not funded by the Legal Services Corporation or the Administration on Aging, and certain Protection and Advocacy-funded programs must pay the usual photocopying and postage charges for documents described on the order forms found in the back of this **Index**.)

✔ Please note that readers who are researching issues concerning social security and SSI disability benefits should also look under the headings—Supplemental Security Income, Social Security programs, and Disability. During part of this volume year, the Clearinghouse indexed social security and SSI disability cases under Disability. This, however, was only a temporary change; after several readers said that they preferred social security and SSI disability cases under Social Security/SSI, we decided to resume publishing and indexing abstracts in this area under Social Security/SSI.

Special Thanks

John Blaser, then Associate Editor of the *Review* and other Clearinghouse publications, edited this **25th** Clearinghouse Review Annual Index. Special thanks are due to John for his extra efforts in making the Index as accurate and as comprehensive as possible. Producing the Index is a year-round project. Thanks are also due to Gretchen Schroeder for editorial assistance.

M Suggestions Welcome

Our annual indexes are crucial to your legal research, and they make all of the monthly issues of the **Review** more useful. If you have suggestions or comments on ways to improve the **Index**, please write or call the Clearinghouse.

The Clearinghouse

How to Use This Index

This Index represents a topical categorization of all Case Developments, Advance Sheet Highlights, articles, columns, and Federal Register Highlights that have been reported in the Clearinghouse Review during its 25th volume year, May 1991 to April 1992.

Alphabetical Case Table

The **Case Table** lists alphabetically all cases reported in either the *Case Developments* or *Advance Sheet Highlights* section of the *Review*. For each case, the following information is provided:

- ① the Clearinghouse Number, in brackets;
- 2 any case citations or date of decision, reported with the most recent citation last; and
- 3 the page number(s) of the *Review* on which the case appears.

Topical Indexes

The **Topical Index** classifies all cases reported in the *Case Developments & Advance Sheet Highlights* sections of the *Review*. Most headings contain [®] See and *See also* references directing readers to other major subject headings for information on that topic.

Within each major heading, the cases listed are divided into ⑤ subtopics, often spanning two or more levels or categories representing the most specific issues covered by that case.

ADOPTION

> See also ILLEGIMATE CHILDREN 4

Abandonment ⑤

Eder v. West, [46,542] 1477

✓ Users are advised to search the Topical Index for the names of cases that involve specific research topics, and then to refer to the Case Table for more detailed citation information.

The Articles and Columns Author Index lists articles and columns published in the *Review* by ® author name and by ⑦ topic. The Articles and Columns Topical Index also contains ® short summaries of all articles and columns indexed. The Federal Register Highlights Topical Index lists items under major headings only. Items are listed alpabetically within each category and include the page numbers on

which the items appear in the Review.

For comprehensive research, readers are advised to use this Index in conjunction with the Cumulative Index to volumes 1-17 of the *Clearinghouse Review* and the Annual Indexes to volumes 18, 19, 20, 21, 22, 23, and 24.

⑦ BANKRUPTCY

Bankruptcy for Beginners

by Joanna B. George 6 810

Understanding bankruptcy is essential for meeting clients' needs. . . .

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A Short Review of Poverty Law Advocacy	
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Alien Eligibility Under LSC Restrictions	
by Charles Wheeler	892
The Legal Services Corporation (LSC) re- stricts the use of LSC funds for the repre- sentation of certain categories of aliens, but far more aliens are currently eligible for legal services than were eligible when the restric- tions were first imposed; this article summa- rizes current restrictions.	
Alternative Funding Mechanisms for Legal Services Providers	
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Legal services programs have become increasingly creative in developing new funding sources, particularly state and local governments. This article discusses some of the existing state and local funding mechanisms and addresses planning and program management issues that arise in implementing these new approaches.	
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What Hath the Supreme Court Wrought?	663
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Hudson; Sullivan v. Finkelstein; and Melk-

onyan v. Sullivan] considering the relationship between the Social Security Act review provision, section 405(g), and the Equal Access to Justice Act (EAJA). The EAJA has become largely the domain of advocates for social security claimants; at present, 90 percent of EAJA petitions are filed against the Department of HHS. The relationship between section 405(g) and the EAJA is therefore a critical one for advocates of the elderly and disabled, which renders the Supreme Court's trilogic foray into the area all the more important.
f Mice and Mail: Managing LegalAid/Net
by John Paul Kemp
This article provides an introduction to LegalAid/Net, a powerful tool that offers legal services advocates both improved legal research and access to a community of ideas

by John Paul Kemp	1327
This article provides an introduction to Le- galAid/Net, a powerful tool that offers legal services advocates both improved legal re- search and access to a community of ideas	
and strategies.	
Practical Uses of Computers in	

	Legal Services
-	by John Paul Kemp
	Although computers can do many things,
	they are not the answer to all problems in le-
	gal services. Computers should do three
	things in an office. They should increase the
	quality of work, increase the quantity of
	work, and free staff to spend more time with
	clients and advocacy. This article discusses
	some practical uses of computers to achieve
	these anals in legal services offices

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The National Clearinghouse for Legal Services provides informational support services to legal services attorneys and paralegals through the Clearinghouse Review and other publications, the Clearinghouse Order De-

partment, and the Clearinghouse Computer- Assisted Legal Research (CALR) Project. The attached article provides a comprehen- sive summary that will tell you how best to		Sex Discrimination Topics: Employment and Education by Ellen Vargyas
use these many services. The Role of National Support in Legal Services	842	This article will address the implications of two key areas of federal sex discrimination law for a legal services practice: discrimination against women in employment and in education. CONSUMER
We Are State Support by Elvera Anselmo and Randall Chapman	844	Consumer and Energy Law Developments During 1991
This article provides a brief history and an		by the National Consumer Law Center 1107
overview of state support centers and the in- tegral role that they play in the legal services community.		This article summarizes developments in consumer and energy law. Consumer law developments discussed in this article include
BANKRUPTCY		the Federal Debt Collection Procedures Act,
Bankruptcy for Beginners by Joanna B. George	810	usury after deregulation of interest rates, high-rate lending in minority neighborhoods, and changes to the Bankruptcy Code that affect low-income consumers. Energy law developments that are discussed include LIHEAP, the Low Income Weatherization Assistance Program (WAP), and rural elec-
CIVIL PROCEDURE/ ADMINISTRATIVE LAW		tric cooperatives. Energy Assistance Plans: Alternative Distribution Methods for LIHEAP Benefits
Effective Utilization of Pretrial Depositions for Legal Services Litigation by Curry First	822	Good Business, Good Government, Good Social Policy
Traditionally, pretrial depositions have not been widely used by legal services attorneys as an offensive litigation tactic. This article seeks to change this practice by urging attorneys to develop a professional understanding of deposition rules and techniques and by discussing the advantages of their use.		by Roger Colton and Margot Saunders 1342 This article describes the methods available for the distribution of Low Income Home Energy Assistance Program (LIHEAP) funds. These methods include the Percentage of Income Payment Plan (PIPP) and several actual-cost based models, such
CIVIL RIGHTS		as the LIHEAP Lifeline Rate Plan, the Outlier Buy-Down Program, and the Actual
An Antidiscrimination Legal Construct That Disadvantages Working Women of Color		Cost Crisis Program. National Consumer Law Center: Who We Are and What We Do
by Judith A. Winston	403	by the National Consumer Law Center 1454
This article focuses on the status of women of color in the workplace, on the largely ignored phenomenon of multiple discrimination against women of color, and on the intersection of race and gender in employment law.		This column describes the National Consumer Law Center, the services and new manuals that it offers, and the Center's sponsorship of the Massachusetts Bankruptcy Shelter Preservation Clinic.

DISABILITY

Determining Disability for Children: Implementation of <i>Sullivan v. Zebley</i>	
Part I: The New Sequential Evaluation Process—An Overview	
by Julie Clark	246
This is the first of three articles that examine the new children's SSI regulations. These regulations, published by SSA on February 11, 1991, revise the disability evaluation rules for children, in compliance with the United States Supreme Court's decision in Sullivan v. Zebley. Part I provides an overview of the new sequential evaluation process and examines concerns about the second step of that process—the severity step.	
Part II: The Individualized Functional Assessment	
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Part III: Medical and Functional Equivalence	
by Julie Clark	979
This article examines the interim final rules that revised the disability determination process for children's SSI disability claims pursuant to the Supreme Court's ruling in Zebley v. Sullivan and analyzes the criteria that SSA uses to decide whether a child's impairment meets or equals a listed impairment.	
Durable Powers of Attorney:	
An Analysis of State Statutes	
by Lori A. Stiegel, Sally Balch Hurme, and Michael Stone	690
This article discusses the development of general durable power of attorney (DPA) statutes, the common and unusual provisions contained in those laws, and the concerns that they raise. It also examines the effect of guardianchin on a DPA	

Medical Treatment Rights of Older Persons and Persons with Disabilities	
by the National Legal Center for the Medically Dependent and Disabled	1203
Developments in medical treatment rights of disabled persons include implementation of the Americans with Disabilities Act, passage of federal legislation requiring health care facilities to provide patients with information on advance directives, and several cases involving the refusal of life-sustaining treatment.	
PASS: SSI's Plan for Achieving Self Support	
by James R. Sheldon, Jr	962
For individuals with disabilities, SSI's Plan for Achieving Self Support (PASS) offers a way out of poverty by allowing them to move from dependence on benefits to financial independence. Using practical examples, this article describes how to assist a client in formulating a PASS proposal.	
Protecting the Food Stamps of Zebley Children	
by Mary Ellen Natale	517
This article discusses ways to prevent awards received as a result of <i>Sullivan v. Zebley</i> from reducing the food stamp benefits of disabled children.	
Representing Individuals with Disabilities	
in Securing Social Security and Supplemental Security Income Disability Benefits	
by Eileen P. Sweeney	860
An advocate representing a person who is disabled in securing disability benefits needs to know the basic social security and SSI rules. This article describes the eligibility requirements, the statutory and regulatory rules defining disability, how disability determinations are made, and the appeals process.	
Sheltering <i>Zebley</i> Retroactive SSI Benefits in Trust	
by Sterling L. Ross, Jr	1335
As a result of the Supreme Court's decision in <i>Sullivan v. Zebley</i> , many disabled children will receive substantial awards of retroactive SSI benefits; this article examines the use of trusts to protect award recipients from being disqualified from continued SSI benefits, and the management of such awards.	
the management of such awards.	

The Relationship Between Medicaid		Enforcing Medical Support Orders	
and Social Security Administration		by Paula Roberts and Kristen Tosh	1562
Disability Determinations: An Introduction for Advocates by Michael C. Parks	1566	This is the second of three articles discussing child support enforcement systems. It describes the process for enforcing court orders for health insurance.	
regulatory, statutory, and policy provisions		Family Law Developments	
that affect the interplay between Medicaid and SSA disability determinations and pro- vides a basis for more detailed examination and advocacy.		by Joan Pennington Although legislatures have responded to the needs of battered women and their children, judicial developments in the areas of custody	1158
The Rights of the Disabled in the Food Stamp Program		and divorce have been mixed. Mediation and joint custody continue to be exposed as detri-	
by Eve H. Shapiro and David A. Super Recognizing the special challenges that elderly and disabled people face in obtaining a	68	mental to women and children, and, disap- pointingly, child support enforcement is still a national disgrace.	
nutritious diet, the Food Stamp Act provides them with preferential treatment. However, narrow regulatory interpretations by the De-		Securing Medical Insurance Coverage for Children Through the Child Support Enforcement System	
partment of Agriculture deny full benefits to		by Paula Roberts	1436
many of these food stamp recipients. This ar- ticle highlights the areas in which disabled persons encounter problems in receiving the full benefits to which they are entitled.		This article discusses why establishing chil- dren's rights to medical insurance in all sup- port orders is essential, and what legal services practitioners should be doing to se-	
The Zebley Class Rules		cure medical insurance coverage orders.	
by Joseph Manes	511	The Importance of Family Law to Low-Income Clients and Their Advocates	
by the United States District Court for the Eastern District of Pennsylvania on March 14, 1991.		by Sheila James Kuehl	828
DOMESTIC RELATIONS		article examines the intersection of family law and public benefits programs.	
Child Support Enforcement: An Introduction		The Right to Notice and a Hearing	
by Paula Roberts	868	Regarding Child Support Collections	
This article provides an introductory explora-	000	by Sherry Leiwant	2
tion of the child support enforcement system, its importance to low-income clients, and the remaining inadequacies of the system.		Even though Congress in 1984 clearly di- rected that AFDC families should benefit from the states' collection of their child sup-	
Child Support Enforcement in 1991		port, both the policies of the states and the	
by Paula Roberts	1098	federal government and the states' collection practices have often deprived families of	
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D agencies, including timely provision of		by Joan Zorza	420
services, timely payment of collections, pass through issues, and the new child support guidelines.		Much of the literature on homelessness never mentions woman battering as a cause of homelessness. Yet, the reality is that battered	

women and their children compose a significant proportion of occupants of homeless shelters. This article argues that advocates must recognize domestic violence as a major cause of homelessness; outlines the extent of the problem; and suggests ways to fight domestic abuse and to help prevent the homelessness that often results from such abuse.

ECONOMIC DEVELOPMENT

Community Economic Development at Work: Linking Child Care and Development

This article focuses on child care, a new substantive priority area of the National Economic Development and Law Center, and discusses the community benefits of a child care development strategy by community-based organizations.

Representing Community-Based Development Corporations in a Legal Services Program

by John M. Little 1001

This article is a case study of how Legal Services of Greater Miami, Inc., has represented St. John Community Development Corporation in developing a project in the Overtown community of Miami. The author describes the project's growing pains, housing strategy, funding struggles, and future building plans.

EDUCATION

Changing Educational Outcomes for Young Children from Low-Income Families

by Kathleen Boundy 375

Children of low-income families have unique educational needs. This article covers the legal tools that federal law provides to address these needs and discusses the need for a systemic approach to advocacy for all low-income children.

Developments in Education Law

by the Center for Law and Education 1128

This article discusses the rights of students with disabilities, school discipline cases, and school financing systems. It also reviews

changes in vocational education and early intervention services for infants and toddlers.

EMPLOYMENT

Employment Law Developments

by the National Employment Law Project . . 1141

Litigation during the past year addressed many areas of employment law. Some of the developments discussed in this article concern discrimination law, including the Supreme Court's decision on "fetal protection" policies, labor law, including limits on drug testing in the workplace, unemployment compensation, and the reemployment rights of reservists.

Kids and Careers: How Three Legal Services Employees Cope

by Gary Baldwin 255

In this article, three longtime legal services employees describe how their jobs as advocates for the poor shape their lives as parents.

Protecting Pension and Health Benefits When an Employer Goes Bankrupt or Terminates Employee Benefits

This article discusses some of the remedies available for individuals who lose their employee benefits through unemployment or the bankruptcy or financial problems of their employer.

FOOD PROGRAMS

Fighting Hunger in the Sun: Opportunities to Expand the Summer Food Program for Children

by Sharon Lee Schwartz, Mary Ellen Natale, and David A. Super 1006

One in four children in this country under age 12 is at risk of hunger. This column informs advocates about the possibilities for expanding awareness of the Summer Food Service Program for Children.

Introduction to the Food Stamp Program by David Super and Carrie M. Lewis

This article provides an overview of the Food Stamp Program, including eligibility requirements, the application process, income and benefit calculations, resource limits, work requirements, and overissuances.

Protecting the Food Stamps of Zebley Children	Drugs and AIDS: Meeting the Health Care Needs of Women and Children
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Questionable Rule Denies Food Stamps to Self-Employed Workers	problems associated with drug and alcohol use, HIV infection, and AIDS for low-in-
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The Case Against the Thrifty Food Plan as	> See DOMESTIC RELATIONS for article summary
the Basis for the Food Component of the AFDC Standard of Need	Health Care for the Poor
by Mary Ellen Natale and David A. Super 8	by the National Health Law Program 1171
The "standard of need" is important in determining eligibility for, and benefits under, the Aid to Families with Dependent Children (AFDC) Program. This article examines the "thrifty food plan," one method that states commonly rely upon to compute food costs, and summarizes the research literature dem-	Health law developments in 1991 included implementation of several OBRA-90 Medicaid and Medicare provisions expanding coverage, proposed cutbacks in state programs in response to recessionary fiscal constraints, and renewed interest in universal health coverage.
onstrating the inadequacy of this method. The Rights of the Disabled in the Food	Health Care Rights of the Poor: An
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•	This article provides an overview of the pri-
HEALTH Assisting Older Persons with Long-Term Care Insurance Choices by Douglas Shapiro	mary sources for health care—Medicaid, Medicare, private insurance, and state and county indigent care programs—and exam- ines protection of access to health care pro- vided by the Hill-Burton program, emergency medical treatment, and civil rights.
available, the issue of who needs LTCI and how much to buy, the criteria by which to judge LTCI policies, and the need for regula-	Lead Poisoning Problems Challenged on Many Front
tion of LTCI.	by Jane Perkins
Development of Safety Procedures for Abatement of Lead-Based Paint	Lead poisoning is one of the most serious and widespread environmental diseases af-
by Lucy A. Billings	fecting children in the United States. The attention now being paid to lead toxicity is welcomed by advocates, who saw interest in the problem wain during the 1980s after federal categorical grants and reporting requirements were terminated. This article describes recent activities surrounding the lead poison-

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ing epidemic.

Managed Care: How to Challenge Inadequate Access for Medicaid Beneficiaries by Michele Melden	228	offices, HCFA's interpretation of the legisla- tion, and states' progress in complying with the requirements. Securing Medical Insurance Coverage for Children Through the Child Support Enforcement System	
Medicaid budget shortfalls. This article de- scribes how Medicaid recipients' access to health care in managed care plans has wors- ened and suggests ways to address inade- quate access.		by Paula Roberts	
Medicald and the Elderly Poor—A Second Look at the Medicare Catastrophic Coverage Act: Transfer of Assets and Spousal Impoverishment by Jeanne Finberg and Patricia Nemore The Medicare Catastrophic Coverage Act of 1988 and its amendments made significant changes in the Medicaid program for elderly persons. This article reexamines the spousal impoverishment and transfer of assets rules, and addresses issues of implementation and statuatory construction that affect poor seniors:	1316	by Charles P. Sabatino and Vicki Gottlich. The Patient Self-Determination Act recently passed by Congress could have a profound effect on the way most adults make and plan for critical health care decisions. This article examines the potential benefit of the new law, as well as new concerns that it poses for elderly clients—particularly for individuals who lack strong, mainstream social supports because of poverty, isolation, institutionalization, or ethnic and cultural background. The Omnibus Budget Reconciliation Act of 1990: An Analysis of Health-Related	639
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by Naomi Karp and Bess M. Brower This article discusses the limitations of Medigap coverage, Medigap market abuse, minimum Medigap coverage standards set forth in the Baucus amendment, state efforts at regulation, and changes made by OBRA-	670	1990 became the vehicle for virtually all of Congress's legislative changes in the Medicaid and Medicare programs for 1990. This article presents a summary of some of the key changes in the Medicaid Act. The Relationship Between Medicaid and	
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Outstationing of Medicaid Eligibility Workers Becomes Mandatory by Jane Perkins and Glennis Gold This article describes recent legislation that requires states to "outstation" Medicaid eligibility workers at locations other than welfare	1347	maternal deaths, and that these tragedies, which fall so heavily upon low-income families, are largely preventable. Medicaid, as both a public health insurance program and as the chief support of health care providers to the poor, can play a powerful role in campaigns to reduce infant mortality.	

HOUSING Establishing a Right to Housing: A General Guide by Florence Wagman Roisman People who work full-time should have access to decent, affordable housing. This article discusses different aspects of advocacy to secure a right to decent housing, including ways of persuading people to establish such a right, constitutional campaigns, state and local laws. AFDC laws, and state mental health and SSI laws. Handling a Drug-Related Eviction from **Public Housing** 793 Representing tenants faced with drug-related evictions is a very controversial issue that legal services programs must address. This article discusses how to develop an office policy on handling such cases, how to interview the client, possible defenses, and issues to consider regarding a jury trial. Homeless Women and Children by Alice Bussiere, Henry Freedman, Dan Manning, Lisa Mihaly, and James Morales The special problems of homeless women and children require legal services advocates to use their expertise in a variety of substantive areas. This article surveys new develop-

The special problems of homeless women and children require legal services advocates to use their expertise in a variety of substantive areas. This article surveys new developments in child welfare, public assistance, and housing law, as well as innovative approaches that cut across substantive areas in an effort to provide lasting solutions to the problems of homeless women and their children.

Housing Rights of Older Persons

During the past year, attorneys and other advocates have reported a significant increase in the number of older persons who have been denied admission to or evicted from rental housing due to their perceived inability to live independently. We also continue to see community opposition to group living arrangements for the elderly. This article will discuss recent developments in this area, with particular emphasis on the rights of the frail elderly.

by Kim Savage and Stephanie Edelstein . . .

Introduction to HUD Conventional Public Housing, Section 8 Existing Housing, Voucher, and Subsidized Housing Programs

Part I: Conventional Public Housing

Part II: Section 8 Existing Housing, Voucher, and Subsidized Housing by Fred Fuchs

This is the second part of a two-part article on federal housing programs that summarizes the programs for new advocates. This portion outlines the Section 8 Existing Housing, Voucher, and Subsidized Housing Programs.

Merging Energy Considerations with the New Housing Initiatives

by Roger D. Colton and Margot Saunders . . 1572
This column describes how concerns about affordable energy can be addressed in each section of an annual Comprehensive Housing Affordability Strategy (CHAS) under the new housing initiatives.

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Self-Help Evictions

help evictions.

Tenants' Rights in HUD Housing Programs: A Summary of Recent Developments

by the National Housing Law Project 1183

Major developments in housing law in the past year include passage of the Cranston-Gonzalez National Affordable Housing Act, which created new programs and initiatives,

and restoration of the grievance procedure for public housing tenants in cases not in- volving criminal activity.	the nation can no longer afford to have such widespread child poverty—economically, socially, or morally—and that the nation can afford to eliminate child poverty.
Woman Battering: A Major Cause of Homelessness	Youth Law Developments
by Joan Zorza	****
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IMMIGRATION	The past year has seen substantial successes in litigation targeting systemic inadequacies in foster care and children's protective serv-
An Outline of Immigration Law by Daniel Levy	ices; meanwhile, children's advocates continued to work toward full implementation of both expanded SSI eligibility under <i>Zebley</i> and federal laws protecting families with children from housing discrimination.
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describes the eligibility requirements for the programs and the forms that need to be com-	MIGRANTS
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Fifteen Reasons Why Low-Income Elderly Clients Don't Get Public Benefits	acted in the past year that will have an impact on the rights of the elderly poor. Topics
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must meet in order to receive benefits. This article frames some of the issues presented by claimants seeking unemployment compensation.

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Some Vietnam-Era Veterans May Be Entitled to Retroactive Chapter 34 Benefits	
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Under the terms of a recent consent order, the VA has agreed to pay retroactive education benefits to certain veterans because the court determined that a VA regulation implementing the program illegally excluded eligible veterans.	
The Reemployment Rights of Reservists	
by the National Employment Law Project The financial hardship precipitated by the call-up for active duty in the Persian Gulf is, of course, a subject of significant concern to reservists and their families. Most reservists have been especially concerned about the status of their civilian jobs upon returning from active duty and the loss of income due to military service. This article will outline the governing legislation affecting reservists' rights and explain reservists' employment options with respect to their military service.	17
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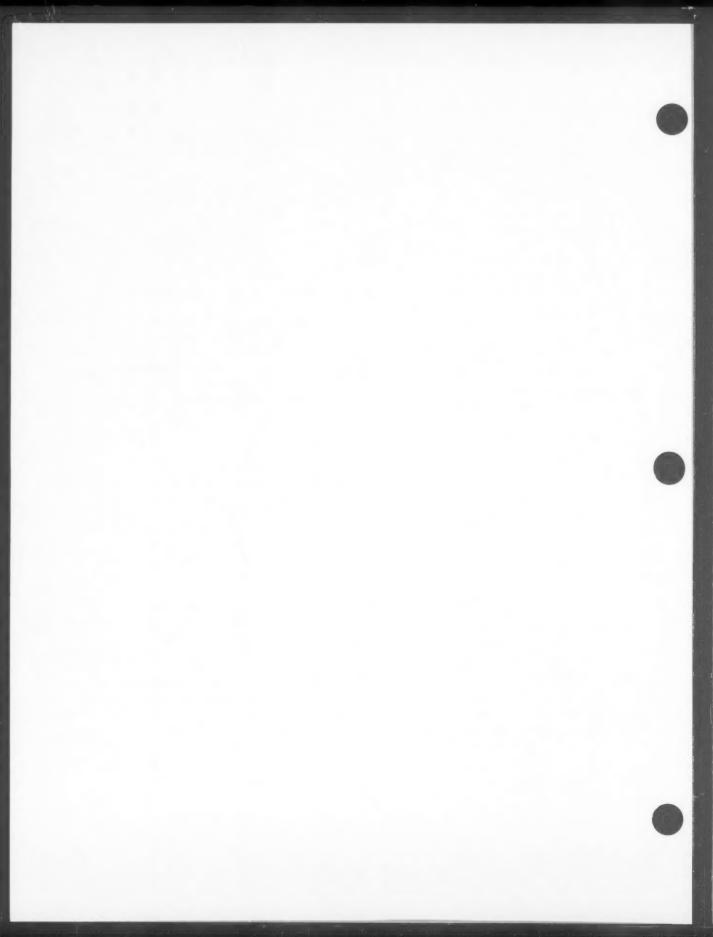
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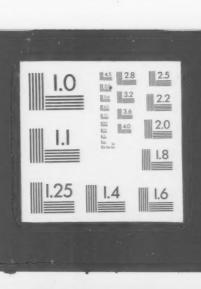
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